IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIFTEENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 17618 of 2003

Between:

M/S. Joswasalt and Chemical Pvt. Ltd., Talagam, Tekkalli Mandal,
Srikakulam District rep., by its Managing Director, H.Rajeswar Rao,
s/o Ranganayakulu, r/o Hyderabad.

..... PETITIONER

AND

The Andhra Pradesh State Financial Corporation, Chirag-ali-Lane, Hyderabad
rep., by its Managing Director

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue writ or direction, particularly in the nature of mandamus or any other writ declaring the action of the respondent corporation in proceeding under Section 29 of the State Financial Corporation of Act i.e., calling for sealed tenders-cum-bids, for the sale of land, buildings, plant and machinery of the petitioner company situated at Talagam Village, Tekkali Mandal, Srikakulam District pursuant to the notification dated 15-4-2003, published in Eenadu daily news paper, as illegal, void and arbitrary and against the settled principles of law.

Counsel for the Petitioner: MR.V.R.AVULA

Counsel for the Respondent: Mr. Y.N.Lohita

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION No.17618 of 2003

ORDER:

Heard Mr. V.R.Avula, learned counsel for the petitioner and Mr. Y.N.Lohita, learned standing appearing on behalf of the respondent.

The petitioner herein, who is a loanee from the respondent-corporation, filed this Writ Petition, *inter alia,* seeking for a Writ of Mandamus, challenging correctness of the action initiated under Section 29 of the State Financial Corporation Act in trying to proceed against its properties by calling for tenders in pursuance of the notification dated 15.04.2003, as illegal.

The grievance of the petitioner is that no doubt the petitioner obtained a loan facility for a sum of Rs. 45,56,000/- in the year 1987 from the respondent-corporation. In respect of the said loan, the respondent had already initiated proceedings under Section 31 of the State Financial Corporation Act (for short, 'the Act'), which has been taken up as O.P. No.234 of 1998 before the District Judge, Srikakulam and the same is still pending. In spite of the said proceedings, the respondent issued impugned notification in daily newspaper on 15.04.2003 purported to be under Section 29 of the Act calling for tenders for proceeding against the mortgaged property. The main submission of the petitioner is that having taken recourse under Section 31 of the Act, the respondent can not invoke provisions of Section 29 of the said Act in respect of the properties. In support, the petitioner sought to place reliance on decision of the Apex Court in *Andhra Pradesh State Financial Corporation v. M/s. GAR Re-Rolling Mills and another*. Hence, the Writ Petition.

In the counter affidavit filed on behalf of the respondents, it is stated that the proceedings as initiated under Section 31 of the Act were only against the sureties and the present proceedings initiated under Section 29 of the Act are against the properties. Further, it is also pointed out that having regard to the principles subsequently laid down by the Apex Court in *Haryana Financial Corporation & another v. M/s. Jagadamba Oil Mills and another,* the decision sought to be relied on by the petitioner has no relevance. Further, it is also pointed out that advertisements have already been issued in news papers on 24.01.1994, 08.12.1995, 17.12.1996, 22.11.1997, 10.08.1998, 19.10.1999, 25.12.1999, 15.07.2000, 01.12.2000, 12.06.2001, 02.02.2002, 11.06.2002 and 10.11.2002 inviting offers for purchase of properties. Since there was no response, a fresh notification was issued in Deccan Chronicle daily on 13.04.2003, The Economic Times on 14.042003 and Eenadu on 15.04.2003 and the respondent received two offers, of which one is for Rs.12,00,000/- with 100% down payment basis payable within 90 days from the date of confirmation of sale. Accordingly, it was confirmed and the same was approved by the board of the respondent-corporation in its meeting held on 26.07.2003 and a sale letter was issued on 02.08.2003 and the purchaser remitted necessary amount towards E.M.D. Therefore, it is submitted that the pendency of proceedings in O.P.No. 234 of 1998 under Section 31 of the Act has nothing to do with the above, as the same were filed only to enforce liability on sureties, but not against the mortgaged properties. Therefore, there are absolutely no merits in the above Writ Petition and the same is liable to be dismissed.

Considering the submissions made and on perusal of the material, the only question for consideration is as to whether on the facts and circumstances, the proceedings as initiated by the respondent-corporation under Section 29 of the Act, are sustainable ?

There is no dispute to the fact that the petitioner obtained the aforesaid loan, which remained unpaid. Therefore, the respondents filed the said O.P. No. 234 of 1998 under Section 31 of the Act, which is still pending. However, now the respondents sought to proceed against the mortgaged property. Accordingly, they issued notification, which is challenged on the ground that there can not be any dual recourse at the same time by the respondent-corporation. As already held in *Haryana Financial Corporation & another v. M/s. Jagadamba Oil Mills and another(2 supra),* there is no bar to initiate such proceedings under Section 29 of the Act. Further, it is also admitted that the respondent sought to distinguish on the ground that the proceedings under Section 31 of the Act are only against the sureties and the other one under Section 29 of the Act is only against the mortgaged properties. Admittedly, notifications have already been issued in various news papers and as per the respondent, sale has already been held and the bid is confirmed and a letter was issued and the purchaser made deposit. In view of the circumstances as pointed out, the whole writ goes as adopted by the petitioner only odious. In view of the same, it can not be said that the respondent-corporation could not have proceeded under Section 29 of the Act in respect of the mortgaged property. Therefore, I do not find any merits in the Writ Petition.

The Writ Petition is, accordingly, dismissed. No costs.

(B.Prakash Rao, J.)

15.04.2005

DRK

Copy to:

1. The Managing Director, A.P.State Financial Corporation, Chirag-Ali Lane, Hyderabad.

2. Two CD copies.